IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1807 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HITENDRASINH TEMUBHA ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1807 of 2002

MR AR SHAIKH for Petitioner No. 1

MR SAMEER DAVE AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/03/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu, who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by order dated 29/11/2001 passed by the District Magistrate, Kutch-Bhuj and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three criminal cases registered against the detenu under the Prohibition Act. The last offence is registered on 3/9/2001 before the Gandhidham Police Station vide Prohi.CR No.5157 of 2001 for the offences punishable under Sections 66(B) and 65(A)(E) and 116 of Prohibition Act. The detaining authority has passed the detention order on 29/11/2001. Thus, there is a delay of more than two and half months in passing the detention order. No affidavit explaining the delay has been filed either by the detaining authority or by the State. The learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the last offence is registered against the detenu on 3/9/2001 and the order of detention has been passed on 29/11/2001 and hence, there is a delay of more than two months in passing the order of detention. No affidavit has been filed either by the

detaining authority or by the State explaining the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 29/11/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Hitendrasinh Temubha Zala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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